U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-A-

DATE: SEPT. 25, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician and researcher in the field of cardiology, seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree, and asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B)Waiver of Job Offer –
> >
> > > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.
> > >
> > > (ii) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if –

> (I) (aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and
>
> (bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

The Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the beneficiary seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the beneficiary will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the beneficiary's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the beneficiary, rather than to facilitate the entry of a beneficiary with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on February 21, 2014, at which time he was working as a cardiology fellow at the [redacted] in New York. In an accompanying introductory statement, the Petitioner indicated that his current and prospective work involves both clinical practice and medical research in the field of cardiology. The Petitioner stated that his research "is having a widespread impact on the quality of medical care across the United

States, leading to improved treatment modalities and greater insight into challenging medical conditions."

The record indicates that, at the time of filing the Form I-140, the Petitioner had authored or co-authored several conference presentations and two published journal works, consisting of an article and an abstract from a conference presentation, both published in 2011. The Petitioner submitted letters of recommendation from current and former supervisors and colleagues, as well as from independent professionals in his field, attesting to his expertise in clinical settings and the significance of his medical research.

In a January 6, 2014, letter, Program Director for Cardiovascular Disease at described a research project in which the Petitioner, by examining viability studies on patients with ischemic cardiomyopathy, found treatment using cardiac magnetic resonance imaging (MRI) to be as sensitive as the more expensive positron emission tomography (PET). His results, an article entitled were published in the stated, "I believe this article provides valuable insight that can be applied in health care facilities across the nation," and that the Petitioner's research has the potential to reduce national health care costs.

The Petitioner also submitted a December 4, 2013, letter from Program Director for the at the previously served as an Assistant Professor of medicine at the during the Petitioner's residency, and was a co-author of the petitioner's presentation, the abstract of which was published in the stated that the Petitioner was the "primary researcher" on this study, which was "the first study to evaluate the current standards for ordering troponin level testing" after a patient presents with chest pain. He also stated that the Petitioner and his team "are working on developing a strategy to help reduce the costs associated with this test without compromising its effectiveness." asserted that this study "has already garnered a great deal of interest in the medical community," as evidenced by its publication in a "very prestigious journal" and acceptance for presentation at an conference. In addition, indicated that the "has asked for the data in order to add it to their own data," and is interested in conducting a collaborative research project with the Petitioner on the subject. states that the interest in the Petitioner's research is "[a]nother demonstration of the geographical reach of [the Petitioner's] work."

In a February 7, 2014, letter, a hospitalist at described a study in which the Petitioner evaluated the effects of adding proton pump inhibitors to clopidogrel in stroke patients. stated that the Petitioner's findings have "profound" implications, and "can play a substantial role in helping physicians avoid future negative consequences from their treatment plans." He further stated that the study "was presented at a national conference at the in 2012," and "won an

award for the best research presented at this conference." While the record does not include evidence of such an award, the Petitioner submitted evidence that the referenced presentation, which he co-authored, was selected as one of ten "Podium Presentations" to be given at the conference. stated, "The fact that [the Petitioner] is routinely invited to share the results of his work and the fact that he has presented his research to his peers at a number of professional conferences is a demonstration of both his exceptional ability and the fact that his work is having a national impact."

Chairman of Cardiology at stated in a December 20, 2013, letter that the Petitioner "often has the opportunity to provide other physician[s] with guidance on some of the most challenging medical issues." As an example, described an instance in which the Petitioner and his colleagues successfully diagnosed and treated a rare disease called and then delivered a presentation at an annual conference. stated that sharing this case report constituted "a substantial contribution to the medical profession's understanding of this rare and potentially fatal condition."

is a Senior Staff Physician in Advanced Heart Failure and Transplant Cardiology at where the Petitioner worked as a hospitalist from July 2012 to June 2013. In a December 11, 2013, letter, described research on diastolic heart failure that the Petitioner performed, in which he found an association between vitamin D deficiency and enlargement of the left atrium of the heart. stated that, because vitamin D deficiency is easy to treat, "the results of [the Petitioner's] research will surely have a great benefit." She characterized this research is "an example of important research that [the Petitioner] has done that has the potential to be applied to improving the quality and efficiency of measures to prevent heart disease." The Petitioner did not submit evidence indicating that he had published or presented the research described by

Director of Cardiology at New York, stated in a December 16, 2013, letter that the Petitioner's work "has had a meaningful impact on research and clinical work in cardiology in the United States," and that his research "has the potential for reducing unneeded medical procedures" and thus reducing health care costs. As an example, described research that the Petitioner conducted regarding the use of angiograms, in which he confirmed previous, older findings that a normal angiogram has a good prognostic value in predicting cardiac events relative to the more expensive coronary angiogram. The Petitioner did not submit evidence indicating that he published or presented this research.

In addition to discussing the petitioner's research as noted, each of the above letters described the petitioner's clinical expertise, including his skills in performing complex medical procedures. Several of the letters described a shortage of cardiologists in the United States, and the Petitioner submitted media articles addressing that issue.

The Director issued a request for evidence (RFE) on September 11, 2014, requesting evidence to establish "a past record of specific prior achievement with some degree of influence on [the

Petitioner's] career field as a whole." The Director requested evidence demonstrating the significance of the Petitioner's contributions, and documentation that his work being implemented by others in the field.

In response to the RFE, the Petitioner submitted documentation regarding his recent research projects and presentations, evidence demonstrating that he served as a reviewer for medical journals, and an excerpt from the Fall 2014 course catalog listing the petitioner as a "Preceptor" in cardiology. In a November 24, 2014, letter responding to the RFE, the Petitioner stated that he "is performing services that are beyond the normal scope of the duties of a professional in his field and position." The Petitioner stated that, in addition to "engaging in new, groundbreaking research," he is sharing his research results through presentations, reviewing manuscripts, and teaching medical students.

The Petitioner also submitted a November 21, 2014, letter from Director of Advanced Cardiovascular Imaging Services at the stating that the Petitioner "has been steering a ground-breaking research" regarding vulnerability to atherosclerosis. stated that the Petitioner played a critical role in the grant application process for the study, and that he "will present his new data in the national as well as international scientific conferences and will publish his research accomplishments in the scientific journals."

The Director denied the petition on February 20, 2015, finding that the petitioner had not established sufficient impact and influence on his field to meet the third prong of the *NYSDOT* national interest analysis. On appeal, the Petitioner contends that his previously submitted evidence establishes his eligibility for the benefit sought.

III. ANALYSIS

As stated above, the analysis set forth in *NYSDOT* requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n. 6.

The Petitioner has stated that his influence on his field is established by the fact that he has presented his research findings in publications and at conferences. Presentation or publication of his work demonstrates that the Petitioner's research findings were shared with others and may be acknowledged as original based on their selection to be presented or published, but it does not establish that those findings have had an impact on the field. The Petitioner did not present documentary evidence showing, for instance, that his presented work has resulted in medical advances that have been implemented at a number of hospitals, that his work has been frequently cited by independent researchers, or that his findings have otherwise influenced the field as a whole. Many of the submitted letters describe the potential of the Petitioner's research findings to reduce national health care costs by improving the cost effectiveness of medical testing and treatment. However, while several letters include general statements that the Petitioner is having an impact on

his field, they do not state that his findings are being widely implemented, nor do they provide specific examples of how the Petitioner's work has impacted the field of cardiology. For these reasons, we find the evidence insufficient to demonstrate that the petitioner has had some degree of influence on the field as a whole.

Regarding the previously noted assertions and evidence about the shortage of cardiologists in the United States, the unavailability of qualified U.S. workers is not a consideration in national interest waiver determinations because the labor certification process is already in place to address such shortages. *NYSDOT* at 218. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *Id.* at 221. Section 203(b)(2)(B)(ii) of the Act describes an alternative waiver for certain physicians who agree to work in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. To qualify for that waiver, it is not sufficient for a petitioner to submit evidence regarding a shortage of physicians in his or her field of practice. Rather, the waiver is limited to certain physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12. The Petitioner has not addressed or attempted to meet these regulatory requirements.

IV. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. The petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. While the petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his influence be national in scope. *NYSDOT* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). Considering the letters and other evidence submitted , the petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of K-A-*, ID# 13964 (AAO Sept. 25, 2015)